IN THE HIGH COURT OF UTTARANCHAL AT NAINIATL

Chapter VIII, Rule 32(2)(b)
Description of case

Writ Petition No. 240 of 2004(S/B)

Date of decision: 12th August, 2004

~~For the approval of~~

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to The reporters for reporting? ( )

- Whether the reporters be allowed to see the Judgment? (yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINIATL

Writ Petition No. 240 of 2004 (S/B)

Union of India
Through Secretary Posts,
Secretariat, New Delhi & another. …… Petitioners

Versus

Central Administrative Tribunal,
Allahabad & another. …….. Respondents

Mr. V.B.S. Negi, learned counsel on behalf of the petitioners.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Irshad Hussain, J.

Date: 12th August, 2004

(Per Hon'ble the Chief Justice)

1. We do not think that we can interfere in this writ petition, which is against the judgment and order dated 15.4.2004 of the Central Administrative Tribunal.

2. The Central Administrative Tribunal found that the respondent No. 2,Namely Hitendra Singh Bisht, who was a physically challenged person, was selected as Extra Departmental Branch Post Master of Village Quitrath, district Pethoragarh by order dated 11.9.98. He was, then, served with a show-cause notice as to why his appointment, which was not properly made, be not cancelled.

3. We have seen the said show-cause notice. The Tribunal perused the said show-cause notice and found that there was absolutely no reason and, therefore, the petitioner before it (respondent No. 2 herein) was not in a position even to reply the said show-cause notice. It seems, ultimately, that the Post Master General held that since there was no reservation for the physically challenged persons, the selection of respondent No. 2 was bad. The Tribunal took the view that the respondent No. 2 was not given any opportunity whatsoever to explain the reasons against the passing of the orders

canceling his selection. We agree with Tribunal because we have also seen from the show-cause notice that it is absolutely blank. It is also not mentioned in the show-cause notice as to why the selection of the respondent No. 2 was bad in law or irregular in any manner.

4. Before us, Mr. V.B.S. Negi, learned counsel appearing on behalf of the petitioners, very strongly urges that the respondent No. 2 had scored lesser marks than one Devki Nandan Joshi, who was also a competitor and therefore, he should have been selected. We do not find any such mention in the show-cause notice. Had the show-cause notice been properly reasoned, the respondent No. 2 could have had the opportunity to give a proper reply. Mr. V.B.S. Negi, further says that there is no provision for reservation for the physically challenged persons. But that also was not the reason in the show-cause notice, otherwise, the respondent No. 2, who is a physically challenged person would have had the opportunity to show us as to whether the reservation was available for physically challenged persons or not.

5. We will have to take notice of the recent legislation passed by the Central Government providing reservation to the physically challenged persons by Persons with Disabilities (Equal Opportunities) Act, 1996.

6. Considering the overall situation, we do not think that the Tribunal has taken any incorrect decision in allowing the original application filed by the respondent No. 2. We are in agreement with the Central Administrative Tribunal that on the basis of a defective show-cause notice, the Central Government would not be in a position to cancel the selection of the respondent No. 2 and that too, after two years. we agree with the same and confirm the view taken by Central Administrative Tribunal.

7. Accordingly, the writ petition is dismissed.

(Irshad Hussain, J.)
12.8.2004

(V.S. Sirpurkar, C.J.)
12.08.2004

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